

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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GARY SMITH,

Plaintiff,

- v -

Civ. No. 9:08-CV-469  
(GLS/RFT)

M. GRAZIANO, et al.,

Defendants.

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**RANDOLPH F. TREECE**  
**United States Magistrate Judge**

**ORDER**

On March 20, 2009, *pro se* Plaintiff Gary Smith filed a Motion to Compel Discovery, pursuant to FED. R. CIV. P. 37. Dkt. No. 37. The gist of Smith's Motion is that he served Demands for Interrogatories and to Produce Documents upon the Defendants on or about December 31, 2008. *Id.* Since Answers were not received within thirty (30) days, Smith forwarded letters to Defendants to instigate timely responses but those letters were to no avail. *Id.*

As a part of this Court's new practice, especially when a litigant is a prisoner, rather than wait for his adversary to respond, we initiate a Discovery Hearing to be conducted by telephone. Such a telephone Discovery Hearing was held on April 6, 2009. According to the Defendants the following regrettable scenario occurred: Defendants are not certain when Smith's Demands were received but it took considerable time to obtain appropriate responses to the Interrogatories. Nonetheless,

Defendants mailed out their Responses to Smith's Demands on February 27, 2009, to Anna M. Kross Center (AMKC), where Defendants believed Smith to have been housed. On March 12, 2009, those Demands were returned with the notification that the specific inmate's correctional number must be reflected in the correspondence. Upon receiving that instruction, the Defendants, once again, mailed the Responses to Smith at AMKC on March 12, 2009. But, once again, approximately two weeks later, on March 23, 2009, those Responses were returned, this time based upon the representation that Smith was no longer incarcerated at AMKC due to being placed on work release. Presumably, checking the case docket, Defendants ascertained Smith's new address in Queens, New York, and thus, mailed the Responses to that address on March 23. Yet again, those Responses were returned on April 3, 2009, since Smith no longer resided at that address, because his parole was violated on March 18, 2009. In fact, as confirmed by Smith, he was already incarcerated at AMKC on March 18, 2009. Apparently, there must have been a recording glitch at AMKC because that institution did not have him listed therein on that date.

In light of all of the foregoing, this Court will not grant the Motion to Compel. Rather, we direct Defendants to serve forthwith their Responses upon Gary Smith, Inmate No. 8950900379, at AMKC, 18-18 Hazen Street, East Elmhurst, New York 11370. If those Responses are not received by Smith within ten (10) days of this

Order, Smith shall file a letter with the Court advising us he has not received said Responses, and shall also provide Defendants with a copy of that correspondence.

Because of the unfortunate delay, this Court will amend the Uniform Pretrial Scheduling Order, extending both the discovery and final day to file dispositive motion deadlines. Accordingly, the Discovery Deadline is **July 6, 2009**, and the Final Day to file Dispositive Motions is **August 28, 2009**.

The Clerk of the Court is directed to note on the case docket Gary Smith's current address as 18-18 East Elmhurst, New York, 11370 and his inmate number as 8950900379. Lastly, the Clerk of the Court is directed to mail a copy of this Order to Smith at the above stated address.

**IT IS SO ORDERED.**

April 6, 2009  
Albany, New York



RANDOLPH F. TREECE  
United States Magistrate Judge